

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

National Grid USA

Docket No. ES06-9-001

Ameren Services Companies

Docket No. ES06-17-001

ORDER GRANTING REHEARING

(Issued May 25, 2006)

1. On April 3, 2006, National Grid plc and National Grid USA (National Grid) filed a request for expedited clarification or, alternatively, expedited rehearing of a letter order issued on March 2, 2006, pursuant to delegated authority,¹ granting authorization to issue securities under section 204 of the Federal Power Act (FPA).²

2. On April 17, 2006, Ameren Services Company (Ameren), on behalf of Union Electric Company (d/b/a Ameren UE), Central Illinois Public Service Company (d/b/a Ameren CIPS), Central Illinois Light Company (d/b/a Ameren CILCO), and Ameren Generating Company (Ameren Generating) (collectively, Ameren Companies) filed a request for rehearing of a letter order issued on March 23, 2006, pursuant to delegated authority,³ granting authorization to issue securities under section 204 of the FPA.

3. As discussed below, the Commission grants the requests for rehearing and finds that the previously authorized issuances of securities by public utility subsidiaries or associate companies of National Grid and Ameren in connection with capital

¹ *National Grid USA*, 114 FERC ¶ 62,210 (2006).

² 16 U.S.C. § 824c (2000).

³ *Ameren Services Companies*, 114 FERC ¶ 62,294 (2006).

contributions and non-interest bearing open account advances from direct or indirect holding companies should not be subject to any set dollar limitation or cap.

Background and Requests for Clarification or Rehearing

National Grid

4. National Grid USA was a registered public utility holding company with nine affiliated utility operating companies under the Public Utility Holding Company Act of 1935 (PUHCA 1935),⁴ which was repealed effective February 8, 2006.⁵ National Grid USA's affiliated utility operating companies were and are Niagara Mohawk Power Corporation (Niagara Mohawk), Massachusetts Electric Company (Mass Electric), The Narragansett Electric Company (Narragansett), Granite State Electric Company (Granite State), Nantucket Electric Company (Nantucket), New England Power Company (New England Power), New England Electric Transmission Corporation (New England Electric), New England Hydro-Transmission Corporation (New England Hydro), and New England Hydro-Transmission Electric Corporation (New England Hydro-Transmission) (collectively, National Grid Subsidiaries).

5. The Securities and Exchange Commission (SEC) previously authorized National Grid to engage in various financing transactions⁶ under PUHCA 1935. In anticipation of repeal, National Grid filed an application with the Commission on December 2, 2005, requesting authorization, under section 204, for its public utility subsidiaries to issue short-term debt securities to third-party lenders as well as in connection with intra-family borrowings from the money pool and from upstream associate companies, provided that the aggregate principal amount outstanding did not exceed the following amounts for each of the National Grid Subsidiaries: (1) Niagara Mohawk - \$1 billion, (2) Mass Electric - \$500 million⁷, (3) Narragansett - \$145 million, (4) Nantucket - \$40 million, New England Power - \$500 million⁸, (6) New England Transmission - \$10 million, (7) New England Hydro - \$12.5 million, and (8) New England Hydro Transmission - \$12.5 million. Authorization was requested through February 8, 2008.

⁴ 15 U.S.C. §§ 79a *et seq.* (2000).

⁵ See Pub. L. No. 109-58, § 1263, 119 Stat. 594, 974 (2005).

⁶ See *National Grid Transco*, Holding Company Act Release No. 27898, 83 S.E.C. Docket 2653 (Sept. 30, 2004); *National Grid Transco plc*, Holding Company Act Release No. 27950, 84 S.E.C. Docket 3577 (Mar. 9, 2005).

⁷ This was an increase of \$100 million over the amount authorized by the SEC.

⁸ This was a decrease of \$250 million from the amount authorized by the SEC.

6. As relevant here, National Grid plc and National Grid USA requested authorization for the National Grid Subsidiaries to receive open account advances from holding companies within the holding company system. The requested open account advance authorization was not limited as to the dollar amounts advanced but the advances would be without interest. National Grid stated that the open account advances would serve as a backstop to the money pool should there need to be an expeditious infusion of large sums of money. Finally, National Grid requested authorization for those subsidiaries receiving advances to record them as ledger entries or otherwise issue securities in exchange.

7. As also relevant here, National Grid noted that, from time to time, its holding companies make capital contributions to one or more of the National Grid Subsidiaries to ensure their ability to meet financial requirements at all times. It stated, however, that such capital contributions are not subject to Commission jurisdiction under section 204 because they involve no issuance of capital stock.⁹

8. On March 2, 2006, the National Grid Subsidiaries were authorized to issue short-term debt securities, as well as receive capital contributions and open account advances from their parent company, provided that the aggregate principal amount outstanding did not exceed the amounts listed above for each subsidiary.

9. On April 3, 2006, National Grid filed a request for expedited clarification or, alternatively, expedited rehearing. National Grid states that the Commission erred by asserting jurisdiction over capital contributions that do not involve the issuance of securities and by placing monetary limits on the capital contributions and the open account advances made by holding companies to the public utility subsidiaries.

10. National Grid argues that the Commission misconstrued both its application and the SEC's practice with respect to capital contributions and open account advances made by holding companies to public utility subsidiaries. National Grid notes that it did not request authorization to make capital contributions and that the monetary limitation on securities issuances that it proposed for short-term debt was not applicable to capital contributions and open account advances. Further, National Grid argues that such monetary limitations are unnecessary and harmful as a matter of public policy because they interfere with the expeditious infusion of cash into public utility subsidiaries that is sometimes necessary. Finally, it asserts that limiting capital contributions and open

⁹ Capital contributions, as well as non-interest bearing open account advances, were authorized under Rule 45(b) of the SEC's regulations under PUHCA 1935. 17 CFR § 250.45(b)(4) (2005). Specifically, Rule 45(b)(4) stated that companies did not have to receive prior approval from the SEC to make capital contributions or open account advances, without interest, to a subsidiary.

account advances will upset the status quo established under the SEC practice, in apparent contradiction of the Commission's intention to be guided by that practice.

Ameren Companies

11. Ameren filed an application with the Commission on December 7, 2005, requesting authorization for its public utility associate companies to issue short-term secured and unsecured debt securities, provided that the aggregate principal amount outstanding did not exceed the following amounts for each of the Ameren Companies: (1) Ameren UE - \$1 billion, (2) Ameren CIPS - \$250 million, (3) Ameren CILCO - \$250 million and (4) Ameren Generating - \$300 million. Ameren also requested authorization for its public utility associate companies each to receive funds in any amount from the holding company in the form of capital contributions and non-interest bearing open account advances to the extent the Commission determines that such transactions are subject to section 204.

12. Ameren stated that holding companies, such as itself, often make capital contributions and non-interest bearing open account advances to subsidiaries without the need for the subsidiary to issue or the holding company to acquire any additional shares of stock in the subsidiary or instruments evidencing indebtedness.¹⁰ Ameren believed that no Commission approval was necessary when no securities were issued or acquired; however, it nevertheless requested authorization for such transactions in the event the Commission determines that these transactions are subject to the Commission's jurisdiction. In that event, Ameren requested authorization for such transactions consistent with SEC Rule 45(b)(4), that is, without any limitation as to the amount of the transactions.

13. On March 23, 2006, Ameren's public utility associate companies were authorized by the Commission to issue short-term debt securities, as well as to receive capital contributions and open account advances from their respective parent companies, provided that the aggregate principal amount outstanding did not exceed the amounts described above for each subsidiary.

14. On April 7, 2006, Ameren filed a request for rehearing, stating that, if the Commission considers capital contributions and open account advances made without issuance of a security to be jurisdictional under section 204, then the Commission should

¹⁰ Ameren states that the capital contribution transactions are typically accounted for as an adjustment to additional paid-in capital of the subsidiary receiving the contribution and as an adjustment to the holding company's investment in the common stock of the subsidiary. Open account advances are typically accounted for as a payable by the subsidiary receiving the advance and as an offsetting receivable by the holding company.

approve these transactions without imposing any specific dollar limitation. Ameren argues that capital contributions that do not involve the issuance of an equity security and open account advances that do not involve the creation of an evidence of indebtedness security do not come under the Commission's section 204 jurisdiction.

Discussion

15. Section 204 of the FPA prohibits a public utility's issuance of a security or assumption of "any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person" without prior authorization by the Commission. In the underlying letter orders, the requested authorizations were granted, but the capital contributions and non-interest bearing open account advances were made subject to aggregate dollar limitations. On further consideration, we find that aggregate dollar limitations should not have been placed on the capital contributions and non-interest bearing open account advances.

16. To the extent that a capital contribution by a parent holding company to a public utility subsidiary does not involve issuance of a security by the public utility, prior authorization of the contribution transaction is not required under section 204. To the extent, however, that an infusion of capital by a parent holding company does involve issuance of an equity security by a public utility subsidiary, then prior authorization under section 204(a) is required for such issuance. Accordingly, as to National Grid's and Ameren's proposed capital contributions, to the extent that their public utility subsidiaries or associate companies do not issue securities, we dismiss their applications for such authorization. To the extent that their public utility subsidiaries or associate companies issue equity securities, they may do so without limitation on the amount of the capital contribution. The issuance of equity securities under this authorization in connection with a capital contribution furthers the public interest in ensuring the sound financial condition of the public utility and will not impair, but rather promote, the ability to perform service as a public utility.

17. National Grid stated in its application that non-interest bearing open account advances received from a parent company by a public utility subsidiary may be subject to the Commission's jurisdiction under section 204. In its request for rehearing National Grid notes that, while its current protocol regarding such advances provides for issuance by the public utility subsidiary of a demand note at zero interest payable in not more than one year, other public utilities in holding company systems have structured their open account advances so as to not result in the issuance of a security. Ameren does not provide a clear statement as to whether, within its holding company system, an evidence of indebtedness is issued by the public utility subsidiary in connection with an open account advance from a parent holding company. Nevertheless it argues that open account advances are typically accounted for as payables on the books of the subsidiary receiving the advance and do not involve the issuance of any note or other evidence of

indebtedness. Both companies urge the Commission to grant authorization of open account advances involving the issuance of debt securities. Ameren, in particular, also argues that the Commission should grant authorization for those advances that do not involve issuance of debt in the event the Commission determines it has jurisdiction over such transactions, based largely on the now repealed PUHCA 1935 and the SEC's rules and practices under that statute regarding open account advances.

18. Similar to the situation with capital contributions noted above, to the degree no security is issued in connection with an open account advance, our authority under section 204 is not invoked. To the extent that a public utility subsidiaries or associate company of National Grid or Ameren issues debt securities in connection with a non-interest bearing open account advance from its parent holding company, it may do so without limitation on the amount of the advance. The Commission agrees that open account advances at no interest that involve issuance of an evidence of indebtedness can serve an important function in utility finance by providing an expeditious back-up to other forms of financing such as money pools. The issuance of evidence of indebtedness by a public utility subsidiary to, and in connection with an open account advance by, the parent holding company is also consistent with the Commission's recently adopted regulation granting blanket authorization, under section 203(a)(2) of the FPA, for a holding company to acquire securities, in any amount, issued by a subsidiary.

19. Non-interest bearing open account advances by a holding company to a public utility subsidiary are a means to fund a sudden and unforeseen need for cash by the utility. As such, they are an infrequently used means to infuse capital into the public utility subsidiary. While they are infrequent, to ensure that when they do occur they are consistent with the requirements of section 204, we direct that whenever there is an open account advance, (1) an authorized officer of the public utility certify, within 30 days of the date of the advance, that, at the time of the advance, repayment of the funds advanced will not impair the ability of the public utility to perform as a public utility and (2) an authorized officer of the public utility certify, within 30 days of the date of the advance, the intended use or uses of the funds advanced. These certifications are to be retained in company files, and provided to the Commission or its staff upon request, for 5 years from the date the transaction is completed.¹¹

¹¹ Completion of the open account advance transaction means that the advance has been repaid, that the holding company has explicitly forgiven repayment of the advance or the advance has been converted to a capital contribution.

The Commission orders:

The requests of National Grid and Ameren for rehearing or clarification are hereby granted, as discussed in the body of this order, and the aggregate dollar limitations as to capital contributions and non-interest bearing open account advances are hereby lifted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.